

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55236; File No. SR-ISE-2006-78]

### Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing of Proposed Rule Change Relating to the Facilitation Mechanism

February 2, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on December 13, 2006, the International Securities Exchange, LLC (“ISE” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared substantially by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The ISE is proposing to amend its rules to allow both facilitated and solicited transactions to be executed using the Exchange’s Facilitation Mechanism. The text of the proposed rule change is as follows, with deletions in [brackets] and additions italicized:

Rule 716. Block Trades

(a) through (c) no change.

(d) Facilitation Mechanism. The Facilitation Mechanism is a process by which an Electronic Access Member can execute a transaction wherein the Electronic Access Member seeks to facilitate a block-size order[s] it represents as agent, and/or a transaction wherein the Electronic Access Member solicited interest to execute against a block-size order it represents as agent. Electronic Access Members must be willing to [facilitate] execute the entire size of orders entered into the Facilitation Mechanism.

(1) through (3) no change.

(e) no change.

Supplementary Material to Rule 716

.01 through .08 no change.

\* \* \* \* \*

#### II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ISE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The ISE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

##### A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The ISE offers three different execution facilities for the execution of two-sided orders (*i.e.*, crosses): a Facilitation Mechanism, a Solicited Order Mechanism and a Price Improvement Mechanism. All three of these mechanisms have different execution features. For example, the Facilitation Mechanism guarantees members up to 40% of a customer order and is limited to orders of at least 50 contracts, the Solicited Order Mechanism offers an all-or-none execution of customer orders and is limited to orders of at least 500 contracts, and the Price Improvement Mechanism requires orders to be entered at a price that improves upon the national best bid or offer (“NBBO”) by at least one penny without a minimum required order size.

Currently, the Facilitation Mechanism is limited to transactions where the member is trading against an agency order as principal (*i.e.*, facilitating an order). In contrast, the Price Improvement Mechanism allows members to enter crossing-transactions where the member is trading against an order as principal (*i.e.*, facilitating the order) and/or where the member has solicited an order to take the other side of an order it represents as agent.<sup>3</sup> Thus, the Price Improvement Mechanism allows members the flexibility to represent a transaction where the member is facilitating only a portion of the customer order and has solicited interest from other parties for the other portion of the order. Members have expressed an interest in having the same flexibility to execute these types of

transactions through the Facilitation Mechanism. Therefore, ISE proposes to modify the Facilitation Mechanism rule to allow both facilitated and solicited transactions.<sup>4</sup>

###### 2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirement under Section 6(b)(5) of the Act<sup>5</sup> that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest. In particular, the proposal will provide additional flexibility for members to execute transactions through the Facilitation Mechanism.

##### B. Self-Regulatory Organization’s Statement on Burden on Competition

The Exchange believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

##### C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any written comments from members or other interested parties.

#### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

<sup>4</sup> For clarification, the ISE proposes to modify the Facilitation Mechanism to allow executions of block size orders against facilitated or solicited orders, or a combination of both. Telephone conversation between Katherine Simmons, Deputy General Counsel, ISE, and Ira Brandriss, Special Counsel, Division of Market Regulation, Commission, on January 3, 2007.

<sup>5</sup> 15 U.S.C. 78f(b)(5).

<sup>3</sup> ISE Rule 723(b) states that the counter-side of an agency order “may represent interest for the Member’s own account, or interest the Member has solicited from one or more other parties, or a combination of both.”

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-ISE-2006-78 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-1090. All submissions should refer to File Number SR-ISE-2006-78. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-ISE-2006-78 and should be submitted on or before March 5, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>6</sup>

**Florence E. Harmon,**  
Deputy Secretary.

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<sup>6</sup> 17 CFR 200.30-3(a)(12).

#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55225; File No. SR-NASD-2007-007]

#### **Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend a Pilot Program That Increases Position and Exercise Limits for Certain Equity Options**

February 1, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on January 25, 2007, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by NASD. NASD has filed the proposal as a "non-controversial" rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### **I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

NASD proposes to amend Rule 2860 to extend a pilot program increasing certain options position and exercise limits. The text of the proposed rule change is available at NASD, the Commission's Public Reference Room, and <http://www.nasd.com>.

#### **II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

#### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

##### 1. Purpose

NASD proposes to amend Rule 2860 to extend a pilot program until September 1, 2007 (unless extended) increasing position and exercise limits for both standardized and conventional options ("Pilot Program").<sup>5</sup> Unless extended, the Pilot Program will expire on March 1, 2007.<sup>6</sup> NASD believes that the Pilot Program should be extended so that it may continue without interruption for the same reasons that are discussed in the Pilot Program Notice.

##### 2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>7</sup> which requires, among other things, that NASD's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The proposed rule change is being made so that the Pilot Program, which achieves these goals as discussed in the Pilot Program Notice, may continue without interruption.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were neither solicited nor received.

#### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing rule change does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, it has

<sup>5</sup> See Securities Exchange Act Release No. 51520 (April 11, 2005), 70 FR 19977 (April 15, 2005) (SR-NASD-2005-040) ("Pilot Program Notice").

<sup>6</sup> See Securities Exchange Act Release No. 54334 (August 18, 2006), 71 FR 50961 (August 28, 2006) (SR-NASD-2006-025).

<sup>7</sup> 15 U.S.C. 78o-3(b)(6).